6-10-2016

State v. Johnson Respondent's Brief Dckt. 43457

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43457**
Plaintiff-Respondent,	)	
	)	**Bonneville Co. Case No.**
vs.	)	**CR-2013-6309**
	)	
LANNETTE KAY JOHNSON,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

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Nature Of The Case

Lannette Kay Johnson appeals from the judgment entered upon her conditional guilty plea to possession of methamphetamine. Johnson contends the district court erred in denying her motion to suppress.

Statement Of Facts And Course Of Proceedings

Deputy Jason Stewart initiated a traffic stop after he observed Johnson making an improper turn. (Tr.[1], p.19, Ls.5-7, p.20, Ls.7-12, p.21, L.22 – p.22, L.17.) Upon making contact with Johnson, Deputy Stewart noticed Johnson was "overly nervous," "[h]er hands were shaking" and her "hand movements were jerky," her "breathing was rapid," her pupils were "constricted," and "her eyes were glossy and bloodshot." (Tr., p.23, Ls.1-14.) Deputy Stewart decided not to issue Johnson a citation for her infraction, but, due to concerns that Johnson might be under the influence, he asked Johnson to step out of her vehicle so he could investigate further. (Tr., p.25, L.13 – p.26, L.23.) During the course of Deputy Stewart's conversation with Johnson, Johnson indicated she had been taking allergy medication and had "consumed a drink at lunch." (Tr., p.29, Ls.1-10.)

When Deputy Stewart asked Johnson if she had any drugs on her, she initially said she did not, but later admitted she had a marijuana pipe in her

[1] There are three transcripts included in the record on appeal. All "Tr." references in this brief are to the transcript of the suppression hearing held on August 7, 2013.

purse. (Tr., p.29, Ls.11-25.) Johnson agreed to retrieve her purse from the car, but rather than taking her purse out, as Deputy Stewart requested, Johnson began rummaging through it while it was still inside the car. (Tr., p.30, Ls.1-21.) Concerned that Johnson could be "going for a weapon," and because Johnson continued to ignore Deputy Stewart's direction to stop reaching in her purse, Deputy Stewart handcuffed Johnson. (Tr., p.30, L.19 – p.31, L.17.) After she was handcuffed, Johnson volunteered that she "grabbed a pouch for someone" and she did not know what was in there, but she thought it was "meth" and she did not want to "go to jail for it." (Exhibit A at 20:40 – 20:46.) Deputy Stewart then explained to Johnson that he handcuffed her due to safety concerns and advised her of her Miranda[2] rights. (Exhibit A at 20:46 – 22:25.) Johnson said she understood her rights and asked if she was being arrested. (Exhibit A at 22:25 – 22:29.) Deputy Stewart explained he was just "detaining" her and advised her he wanted to "talk more about what was in the car." (Exhibit A at 22:29 – 22:34.) Johnson then repeated her story that someone gave her the package that was in her purse and provided additional details to try and support her claim. (Exhibit A at 22:34 – 28:50.)

After assist officers arrived, Deputy Stewart asked Johnson if she had "any objection" to him searching her car for the "pouch with narcotics in it." (Exhibit A at 41:20 – 41:22.) Johnson said she did not object and offered an explanation to Deputy Stewart on how to get inside the car because one of the doors did not work. (Exhibit A at 41:22 – 41:28.) Deputy Stewart confirmed that

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

Johnson was giving him permission to search her car, and she said, "yes." (Exhibit A at 41:28 – 41:31.) Deputy Stewart also deployed his canine, Ringo. (Tr., p.35, Ls.15-25; see also Exhibit A at 44:58 – 46:40.) Ringo alerted on the passenger side door, and when Deputy Stewart opened the door, Ringo "put his nose in the purse, gave an alert and a final response by slowly sitting." (Tr., p.36, Ls.1-7.) The purse Ringo alerted on was the same purse Johnson previously said contained the pouch someone gave her earlier. (Tr., p.36, Ls.8-10.) A search of that purse revealed a tin can with marijuana and a clear plastic bag containing a "clear crystal substance" that tested positive for amphetamine. (Tr., p.36, L.20 – p.39, L.15.)

The state charged Johnson with possession of methamphetamine and possession of marijuana. (R., pp.16-17, 31, 47-48, 97-98.) Johnson filed a motion to suppress and asked "the court to find that certain evidence obtained during the search of the vehicle, was obtained illegally" pursuant to a "warrantless illegal search." (R., p.38.) Johnson also asked that "certain statements" she made "be suppressed as her will was overborne by the circumstances of the interrogation by law enforcement agents." (R., p.39.)

Pursuant to a plea agreement, Johnson pled guilty to possession of methamphetamine, reserving the right to appeal the denial of her motion to suppress, and the state dismissed the possession of marijuana charge. (R., pp.135-138, 141-142.) The court imposed a unified five-year sentence, with two years fixed, but suspended the sentence and placed Johnson on probation. (R., pp.166-168, 176-178.) Johnson filed a timely notice of appeal. (R., pp.181-183.)

ISSUE

Johnson states the issue on appeal as:

> Did the district court err when it denied Ms. Johnson's motion to suppress?

(Appellant's Brief, p.4.)

The state rephrases the issue as:

Must the district court's order denying Johnson's motion to suppress be affirmed because Johnson failed to carry her burden of showing clear error in the district court's finding that she voluntarily consented to the search of her vehicle and she has failed to carry her burden of establishing she was in custody for purposes of Miranda?

ARGUMENT

Johnson Has Failed To Show Error In The Denial Of Her Motion To Suppress

A. Introduction

Johnson challenges the denial of her motion to suppress, arguing "her statements were the result of a custodial interrogation without *Miranda* warnings and her consent to search was not voluntary." (Appellant's Brief, pp.5-10 (footnote omitted).) Johnson's arguments fail. Application of the law to the evidence presented at the suppression hearing supports the district court's conclusions that the search of Johnson's car was proper pursuant to Johnson's consent and that there was no Miranda violation.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found." State v. Colvin, 157 Idaho 881, 882, 341 P.3d 598, 599 (Ct. App. 2014).

Whether a consent to a search was voluntary is a question of fact, the determination of which is reviewed on appeal for clear error. State v. Reynolds, 146 Idaho 466, 472, 197 P.3d 327, 333 (Ct. App. 2008); State v. Stewart, 145 Idaho 641, 648, 181 P.3d 1249, 1256 (Ct. App. 2008). "Findings will not be deemed clearly erroneous if they are supported by substantial evidence in the record." Stewart, 145 Idaho at 648, 181 P.3d at 1256 (quoting State v. Jaborra, 143 Idaho 94, 98, 137 P.3d 481, 485 (Ct. App. 2006)).

Whether a defendant was subject to custodial interrogation such that police were required to provide Miranda warnings presents a mixed question of law and fact. State v. Silva, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000). "The trial court's conclusion that a defendant made a knowing and voluntary waiver of his *Miranda* rights will not be disturbed on appeal where it is supported by substantial and competent evidence." State v. Luke, 134 Idaho 294, 297, 1 P.3d 795, 798 (2000). At a suppression hearing the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." State v. Person, 140 Idaho 934, 937, 104 P.3d 976, 979 (Ct. App. 2004).

C. Johnson Has Failed To Meet Her Burden Of Showing Error In The District Court's Conclusion That The Search Of Her Car Was Valid Pursuant To The Consent Exception To The Warrant Requirement

In requesting suppression of "certain evidence obtained during the search of [her] vehicle," Johnson asserted the search was "illegal" because it was conducted without a warrant. (R., p.38.) In response to Johnson's motion, the state contended the search was lawful because it was performed pursuant to Johnson's voluntary consent. (R., pp.56-57.) A warrantless search conducted pursuant to valid consent does not violate the Fourth Amendment. Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) (citations omitted); State v. Varie, 135 Idaho 848, 852, 26 P.3d 31, 35 (2001). The district court correctly concluded that the search of Johnson's car was proper under the consent exception to the warrant requirement.

At the suppression hearing, Johnson testified that she did not "remember much after" Deputy Stewart stopped her, but she did remember Deputy Stewart "asking [her] something about Miranda rights," and remembered getting her dog out of the car and being allowed to "hold [her] handcuffs in front so [she] could hold the dog" (Tr., p.8, Ls.20-23, p.9, L.7 – p.10, L.25.) Johnson also testified that, at the time, she did not "remember thinking" she was being investigated for a crime, but claimed she did not "have a good enough memory to recall it." (Tr., p.12, Ls.1-7.) After she testified, Johnson offered the video recording of the stop as support for her motion. (Tr., p.15, Ls.1-19; Exhibit A.)

In response, the state called Deputy Stewart as a witness. (See generally Tr., pp.17-40.) With respect to the search of Johnson's car, Deputy Stewart testified that Johnson gave him consent to search. (Tr., p.34, L.7 – p.35, L.2.) The video of the stop is consistent with this testimony. (Exhibit A at 41:20 – 41:31.) Deputy Stewart also deployed his drug canine, Ringo, who alerted on the passenger side door and on Johnson's purse. (Tr., p.35, Ls.15-25, p.36, Ls.1-10; Exhibit A at 44:58 – 46:40.)

At the conclusion of the suppression hearing, Johnson did not present any additional argument in support of her motion other than what was set forth in the motion itself, which alleged a "warrantless illegal search." (Tr., p.47, Ls.1-7.) The district court subsequently issued a written decision. (R., pp.64-69.) Regarding the search, the court concluded:

> The search happened without a warrant, so the burden is on the state to show that it was done in accordance with an established exception to the warrant requirement, and the video of the traffic stop and Deputy Stewart's testimony demonstrate that

> Ms. Johnson freely gave her consent to search the vehicle. Ms. Johnson gave consent to search her vehicle during daylight hours along [a] highly visible roadway. Deputy Stewart was the only law enforcement present for the bulk of the encounter and took the step of changing the setting on the cruiser lights so that Ms. Johnson would feel less constrained. In the video of the traffic stop, Deputy Stewart's demeanor was never threatening and there is nothing to indicate Ms. Johnson's capacity to self-determine was critically impaired. For the foregoing reasons, the evidence obtained during the search of the van is admissible.

(R., p.67.)

On appeal, Johnson argues that the district court erred in concluding that she gave valid consent to search her car because, she claims, her consent was "not voluntary." (Appellant's Brief, p.7.) More specifically, Johnson contends her "consent to search the vehicle was not voluntary" because, she asserts, she "was not free to leave," "was in handcuffs" for "half of" her detention, was "outnumbered by the police," and "had a vulnerable subjective state at the time" because she was "exhausted, her head [was] pounding, and she need[ed] to get to work." (Appellant's Brief, p.7.) Johnson never made any of these arguments to the district court. In fact, Johnson did not acknowledge in her suppression motion that she consented to the search, much less claim that her consent was involuntary (R., p.38), nor did she make that argument at the suppression hearing (see Tr., p.47, Ls.1-7). "Even when a defendant mentions the general basis for a motion to suppress, his or her arguments on appeal are limited by what was argued to the trial court." State v. Armstrong, 158 Idaho 364, 368, 347 P.3d 1025, 1029 (2015) (citations omitted). "[Johnson] may not allege to this Court that the district court's decision was in error based on an argument that was never presented to the district court for consideration." Id. Although the

district court made a determination that Johnson "freely gave her consent to search," that determination was not made in relation to any contrary claim by Johnson; it was made only in the general context of applying the consent exception to the warrant requirement. (See generally R., pp.66-67.) Johnson's contention that her consent was invalid for specific reasons she claims on appeal, which were not argued to the district court, should not be considered. See Armstrong, supra.

Review of the district court's determination that Johnson's consent was "freely" given shows no error. Consent is valid if it is free and voluntary. Schneckloth, 412 U.S. at 225-26 (citations omitted). In order to be valid, consent cannot be the result of duress or coercion, either direct or implied. Id. at 248. The court must consider all of the surrounding circumstances and find consent involuntary only if "coerced by threats or force, or granted only in submission to a claim of lawful authority …." State v. Hoisington, 104 Idaho 153, 158, 657 P.2d 17, 22 (1983) (emphasis original) (quoting Schneckloth, 412 U.S. at 233). "The trial court is the proper forum for the 'careful sifting of the unique facts and circumstances of each case' necessary in determining voluntariness." State v. Rector, 144 Idaho 643, 645, 167 P.3d 780, 782 (Ct. App. 2006) (quoting Schneckloth, 412 U.S. at 233).

Application of the foregoing standards to the evidence presented at the suppression hearing supports the district court's decision regarding Johnson's consent. Johnson's consent was not coerced by threats or force. Indeed, the video of the traffic stop shows Johnson willingly agreed to allow Deputy Stewart

to search for contraband, which she had already told him was present in her car, and Johnson even explained to Deputy Stewart the easiest way to access the car since one of the doors did not work. (Exhibit A at 41:20 – 41:28.) Nothing in the video of the stop supports a finding that Johnson's consent was the result of duress or coercion.

Even if this Court addresses the specific complaints that Johnson raises about her consent for the first time on appeal, those complaints do not demonstrate an abuse of discretion by the district court. "A determination of voluntariness does not turn 'on the presence or the absence of a single controlling criterion.'" State v. Jaborra, 143 Idaho 94, 97, 137 P.3d 481, 484 (Ct. App. 2006) (quoting Schneckloth, 412 U.S. at 226). "[W]hether consent was granted voluntarily, or was a product of coercion, is a factual determination to be based upon the surrounding circumstances, accounting for subtly coercive police questions and the possibly vulnerable subjective state of the party granting the consent to a search." Jaborra, 143 Idaho at 97, 137 P.3d at 484 (citations omitted). Relevant factors in considering the voluntariness of consent include (1) "whether there were numerous officers involved in the confrontation"; (2) "the location and conditions of the consent, including whether it was at night"; (3) "whether the police retained the individual's identification"; (4) "whether the individual was free to leave"; and (5) "whether the individual knew of his right to refuse consent." Id. at 97, 137 P.3d at 484 (citations omitted). However, it is well-established that a lawful investigative detention, standing alone, does not demonstrate coercion, nor is the mere presence of officers asking for consent to

search sufficient to constitute improper police duress or coercion. State v. Holcomb, 128 Idaho 296, 302-03, 912 P.2d 664, 670-71 (Ct. App. 1995); see United States v. Watson, 423 U.S. 411 (1976).

Johnson relies on two of the five factors listed above, in conjunction with her allegedly "vulnerable subjective state at the time," to support her claim that her consent was invalid. (Appellant's Brief, p.7.) That Johnson was detained when she provided consent, and the fact that there were three officers present, does not individually or collectively demonstrate that her consent was the product of duress or coercion. Nor do her claims that she was tired, had a headache, and needed to get to work add anything of significance to the analysis, especially since there is nothing in the record to support a finding that these alleged vulnerabilities were exploited in order to obtain her consent. Johnson has failed to meet her burden of showing error in the district court's conclusion that the search was lawfully conducted pursuant to Johnson's consent.[3]

[3] This Court may also affirm the district court's decision denying Johnson's motion to suppress pursuant to the automobile exception because Deputy Stewart had probable cause to search Johnson's vehicle based on Johnson's admission that there was contraband in the car and based on the drug dog's positive alert. State v. Hansen, 151 Idaho 342, 346, 256 P.3d 750, 754 (2011) (this Court may affirm on any basis supported by the record); Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 580, 850 P.2d 724, 731 (1993) ("where an order of the district court is correct but based upon an erroneous theory, this Court will affirm upon the correct theory"); Total Success Investments, LLC v. Ada County Highway Dist., 148 Idaho 688, 696, 227 P.3d 942, 950 (Ct. App. 2010) ("an appellate court may affirm the district court's decision if an alternative legal basis supports it"). The "automobile exception," which authorizes a warrantless search of a vehicle and the containers therein when there is probable cause to believe the vehicle contains contraband or evidence of criminal activity. California v. Acevedo, 500 U.S. 565, 572 (1991). It

D. Johnson Has Failed To Show Any Error In The District Court's Decision That There Was No *Miranda* Violation In This Case

To safeguard the privilege against self-incrimination afforded by the Fifth Amendment to the United States Constitution, the United States Supreme Court held in Miranda v. Arizona, 384 U.S. 436, 478-79 (1966), that before an individual is subjected to custodial interrogation, the interrogating officers must advise the individual of certain rights, including the right to remain silent. The test for determining whether an individual is in custody for purposes of Miranda is whether, considering the totality of the circumstances surrounding the interrogation, there was a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (per curiam) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam)); State v. James, 148 Idaho 574, 576-77, 225 P.3d 1169, 1171-72 (2010). The standard for determining when Miranda warnings are required does not depend on the subjective belief of the suspect or officer. Rather, when applying this test, the relevant inquiry is how a reasonable person in the suspect's position would have understood his situation. Berkemer v. McCarty, 468 U.S. 420, 442 (1984); James, 148 Idaho at 577, 225 P.3d at 1172; State v. Doe, 137 Idaho 519, 523, 50 P.3d 1014, 1018 (2002); State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999). Factors to be

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is well-established that a positive alert by a drug dog provides probable cause to search a vehicle pursuant to the automobile exception. See Acevedo, 500 U.S. at 572; State v. Yeoumans, 144 Idaho 871, 875, 172 P.3d 1146, 1150 (Ct. App. 2007).

considered by the court on the issue of custody include the time and location of the questioning, the conduct of the officers, the nature and manner of the questioning, and the presence of other persons. State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992); Albaugh, 133 Idaho at 591, 990 P.2d at 757. Ultimately, it is the defendant's burden to demonstrate from "all of the circumstances surrounding the interrogation" that a reasonable person in his position would have believed he was in police custody of a degree associated with a formal arrest. James, 148 Idaho at 577, 225 P.3d at 1172.

Johnson contends her "statements were the product of a custodial interrogation without *Miranda* warnings," although she does not identify what those statements were. (Appellant's Brief, pp.7-8 (capitalization altered).) To the extent this claim is preserved, it fails.

"[G]enerally a person detained as a result of a traffic stop is not considered to be in custody for purposes of *Miranda*." State v. Smith, 159 Idaho 15, ___, 355 P.3d 644, 652-653 (Ct. App. 2015). In district court, Johnson did not identify in her motion to suppress, or a the suppression hearing, at what point she believed her traffic stop became a custodial situation that would entitle her to Miranda warnings. (R., pp.38-39 ("Further, Ms. Johnson requests that certain statements made by Ms. Johnson be suppressed as her will was overborne by the circumstances of the interrogation by law enforcement agents."); see generally Tr.) Nor did she identify in district court, or on appeal, what statements she believes should be suppressed as a result of any alleged custodial interrogation. (R., pp.38-39; see generally Tr. and Appellant's Brief, pp.7-10.) In

fact, Johnson did not even cite Miranda as a basis for her request for suppression. (R., p.39.) As a result, Johnson failed to meet her burden of showing she was in custody and entitled to suppression based on an alleged Miranda violation. Compare James, 148 Idaho at 578, 225 P.3d at 1173 ("Based on the limited evidence presented to the district court, we conclude that James failed to meet his burden of demonstrating, under the totality of the circumstances, that his freedom of movement had been curtailed to the extent associated with a formal arrest. Thus, *Miranda* warnings were not required.").

Johnson has likewise failed to meet her burden of showing error in the district court's decision with respect to Miranda. Notwithstanding Johnson's failure to identify Miranda as the basis for her suppression motion, or identify what statements she believed should be suppressed, the district court cited Miranda in relation to its finding that Johnson's statements were either made "while not in custody or were volunteered." (R., p.67.) The court stated:

> Prior to Deputy Stewart reading Ms. Johnson her *Miranda* rights, there were two periods where Ms. Johnson made statements: the first which runs from the initial contact until Deputy Stewart restrains Ms. Johnson in handcuffs ("first period") and the second, which runs from the restraining until Deputy Stewart reads Ms. Johnson her *Miranda* rights ("second period").
>
> Ms. Johnson was not in custody during the first period because a reasonable person in her situation would not have believed she was in custody. The traffic stop was reasonable in duration and during daylight hours. Deputy Stewart even turned off his overheard lights that were visible to Ms. [Johnson] so that she would feel free to leave. Deputy Stewart's questions were also reasonable in number and intensity and his overall conduct towards Ms. Johnson during the encounter was calm, respectful, and not intimidating. For the foregoing reasons, the defendant did not establish that she was in custody during this portion of the pre-*Miranda* traffic stop.

> Ms. Johnson was not under arrest for the second period of the pre-*Miranda* stop, and even if she were [in] custody for *Miranda* purposes, the statements she made prior to being read her *Miranda* rights are admissible because they were not made as a result of police questioning. *Miranda* rights protect individuals from self-incrimination as a result of police questioning, so aside from custody, there must also be questioning for them to apply. Deputy Stewart did not ask any questions during this period and all the statements made by Ms. Johnson were volunteered. Therefore, the statements made post-custody, but pre-*Miranda* warning are admissible.

(R., pp.68-69.)

Johnson contends "the totality of the circumstances show she was in custody during the first period" and that she was "subject to the functional equivalent of an interrogation during the second period." (Appellant's Brief, pp.9-10.) Both of these arguments fail.

With respect to her first argument, although Johnson cites the "totality of the circumstances test," she only discusses one "circumstance" as an "example" of why she was in custody. (Appellant's Brief, p.9.) Specifically, Johnson contends that because she asked Deputy Stewart "early on if there was 'anything else'" "because she had to get to work," but Deputy Stewart "ignored this question and continued with his investigation," "these circumstances" would have led a reasonable person in Johnson's position to believe she was not free to leave. (Appellant's Brief, pp.9-10.) This argument ignores the relevant law. "[R]outine traffic stops and other investigative detentions pursuant to *Terry v. Ohio*, do not implicate *Miranda* even though the detained persons are not free to leave during the stop." State v. Silver, 155 Idaho 29, 32, 304 P.3d 304, 307 (Ct. App. 2013) (citations omitted). As a matter of law, that Johnson was not free to

leave during the course of the traffic stop is insufficient to show she was in custody for purposes of Miranda. Johnson's claim to the contrary is without merit.

In addition, Johnson's claim that Deputy Stewart just "ignored" her question about whether there was "anything else," is contradicted by the record. The video of the traffic stop reveals that, at the time Johnson asked that question, Deputy Stewart had concerns that Johnson may be driving under the influence. (Exhibit A at 12:00 – 14:40.) After Johnson asked Deputy Stewart if there was "anything else" because she "had to get to work," Deputy Stewart advised her that he was concerned about how her eyes looked, indicated he understood that she needed to get to work, but explained that part of his job is to make sure the "roadway is safe" and that, if he has reason to believe a motorist has "something in [their] system," he has an "obligation" to investigate that. (Exhibit A at 14:00 – 14:40.) Thus, Johnson's factual claim that Deputy Stewart "ignored" her question about whether there was "anything else" and her assertion that "she had to get to work" is contradicted by the record. Johnson has demonstrated no error in the district court's finding that she failed to meet her burden of showing she was in custody.

With respect to the "second period," Johnson argues that "Deputy Stewart's comments" explaining that he handcuffed her due to a concern that she could have been reaching for a weapon when she was rummaging through her purse "were reasonably likely to elicit an incriminating response." (Appellant's Brief, p.10.) This argument is specious.

"Interrogation" for purposes of Miranda may be by "express questioning" or its "functional equivalent." State v. Salato, 137 Idaho 260, 267, 47 P.3d 763, 770 (Ct. App. 2001) (citing Rhode Island v. Innis, 446 U.S. 291, 300 (1980)). "The functional equivalent of interrogation includes 'any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response.'" Salato, 137 Idaho at 267, 47 P.3d at 770 (quoting Innis, 446 U.S. at 301). The Court applies an "objective test to determine whether questioning constitutes interrogation." Salato, 137 Idaho at 267, 47 P.3d at 770 (citations omitted). "Police are not held accountable for the unforeseeable results of their words or actions." Id.

Under no reasonable view could Deputy Stewart's explanation that he handcuffed Johnson because she was making him nervous by rummaging through her purse be construed as the functional equivalent of interrogation. That Johnson made the potentially incriminating statement, "I grabbed a pouch for someone and I don't know what's in it," in response to Deputy Stewart's explanation of why he was "detaining" Johnson (Exhibit A at 19:30 – 20:30), does not mean his explanation was reasonably likely to elicit such a response. Johnson provides no authority that would support such a conclusion, nor does she explain why this would be true. (Appellant's Brief, p.10.) Instead, Johnson essentially asserts, in conclusory fashion, that because she said something potentially incriminating after Deputy Stewart said something, then her statement was the result of interrogation. This argument is particularly nonsensical in this

case because there is no reason to conclude that Deputy Stewart should have known that, by explaining to Johnson why he was handcuffing her, Johnson would make a statement about something in her purse *other than* the marijuana pipe she already admitted was in there and was the reason she was getting her purse in the first place. Deputy Stewart's explanation of why he was handcuffing Johnson was a normal and appropriate response attendant to the circumstances; it was not the functional equivalent of interrogation. Johnson's claim to the contrary fails.

The evidence presented at the suppression hearing established that Johnson voluntarily consented to the search of her car, there was probable cause to search her car, and her Miranda rights were not violated because she was never subject to custodial interrogation without the benefit of such warnings. Johnson has therefore failed to show error in the denial of her motion to suppress.

CONCLUSION

The state respectfully requests that this Court affirm the judgment entered upon Johnson's conditional guilty plea to possession of methamphetamine.

DATED this 10th day of June 2016.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of June 2016, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

/s/ Jessica M. Lorello
JESSICA M. LORELLO
Deputy Attorney General